

recommendations for appropriate corrective measures), or

(2) To undertake such investigations and/or studies and interim corrective measures, and if such interim corrective measures are neither costly nor technically complex and are necessary to protect human health and the environment prior to development of a permanent remedy, or

(3) To undertake investigations/studies with respect to a release from an underground storage tank.

(b) The hearing procedures set forth in subpart C of this part shall be employed if the respondent seeks a hearing on an order directing that—

(1) Corrective measures or such corrective measures together with investigations/studies be undertaken, or

(2) Corrective action or such corrective action together with investigations/studies be undertaken with respect to any release from an underground storage tank.

(c) The procedures contained in subparts A and D of this part shall be followed regardless of whether the initial order directs the respondent to undertake an investigation pursuant to the procedures in subpart B of this part, or requires the respondent to implement corrective measures pursuant to the procedures in subpart C of this part.

[56 FR 49380, Sept. 27, 1991]

Subpart B—Hearings on Orders Requiring Investigations or Studies

§ 24.09 Qualifications of Presiding Officer; ex parte discussion of the proceeding.

The Presiding Officer shall be either the Regional Judicial Officer (as described in 40 CFR 22.04(b)) or another attorney employed by the Agency, who has had no prior connection with the case, including the performance of any investigative or prosecuting functions. At no time after issuance of the initial administrative order and prior to issuance of the final order shall the Regional Administrator, Presiding Officer, or any person who will advise these officials in the decision on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecu-

torial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. If, after issuance of the initial order and prior to issuance of the final order, the Regional Administrator, Presiding Officer, or any person who will advise these officials in the decision on the case receives from or on behalf of any party in an ex parte communication information which is relevant to the decision on the case and to which other parties have not had an opportunity to respond, a summary of such information shall be served on all other parties, who shall have an opportunity to reply to same within ten (10) days of service of the summary.

§ 24.10 Scheduling the hearing; pre-hearing submissions by respondent.

(a) *Date and time for hearing.* The Presiding Officer shall establish the date, time, location, and agenda for the requested public hearing and transmit this information to the parties. Subject to § 24.10(c), the hearing shall be scheduled and held within thirty (30) days of the Agency's receipt of the request for a public hearing.

(b) *Pre-hearing submissions by respondent.* At any time up to five (5) business days before the hearing respondent may, but is not required to, submit for inclusion in the administrative record information and argument supporting respondent's positions on the facts, law and relief, as each relates to the order in question. A copy of any information or argument submitted by respondent shall be served such that the Clerk and petitioner receive same at least five (5) business days before hearing.

(c) *Postponement of hearing.* The Presiding Officer may grant an extension of time for the conduct of the hearing upon written request of either party, for good cause shown, and after consideration of any prejudice to other parties. The Presiding Officer may not extend the date by which the request for hearing is due under § 24.05(a).

(d) *Location of hearing.* The hearing shall be held in the city in which the relevant EPA Regional Office is located, unless the Presiding Officer determines that there is good cause to hold it in another location.